IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 293 OF 2002

Laxman Pundalik Sapkale .. Petitioner

V/s

State of Maharashtra & ors. .. Respondents

Mr.R.K. Mendadkar for the petitioner.

Mr.C.R. Sonawane, A.G.P. for respondents Nos.1, 2, 5 and 6.

Mr.G.S. Hegde for respondents Nos.3 and 4.

CORAM : H.L. GOKHALE &
SMT.NISHITA MHATRE, JJ.

DATE : 9TH SEPTEMBER 2004

P.C. :

1. The petitioner herein claims to belong to Tokare Koli community which is a Scheduled Tribe. He has obtained a certificate to that effect on 28th April 1989. He was selected to a clerical job under the State Transport on that basis on 4th February 1989, but the actual appointment has taken place only on 13th December 1995. In the meanwhile, the respondent No.3 - Divisional Controller forwarded the certificate given by the petitioner for the scrutiny by the Caste Scrutiny Committee. The certificate was forwarded on 24th May 1995. Pending that scrutiny, the appointment came to be made on 13th December 1995 making it clear that the

appointment was subject to the clearance by the Caste Scrutiny Committee.

2. It so transpired that the Committee on making necessary inquiry through the police received an information that no such certificate was issued to the petitioner by the concerned Magistrate. In view of this information, notice was sent to the petitioner asking him to attend at the inquiry. From the reply filed by one Smt. Shewale, Senior Research Officer of the Committee affirmed on 30th August 2004, it is seen that the notice was sent to him at the address which was given to the Committee, but the packet came back with an endorsement that the concerned candidate does not reside at that address. It appears that the Committee still proceeded with the matter and then passed the order on 28th November 2001 directing that the caste certificate dated 28th April 1989 issued to the petitioner be cancelled. The Committee came to the conclusion that on the basis of the report it was clearly established that the certificate as claimed was not issued, that it was a fake document and therefore the applicant did not belong to the particular community.

3. It appears that based on this determination of the Committee, the respondent No.4 - State Transport

Corporation discontinued the services of the petitioner with effect from 7th January 2002. The petitioner, however, filed the present petition affirmed on 15th January 2002 stating in para 7 therein that he apprehended some harsh and hard action. It was not disclosed to the court that such an order of termination had been passed and therefore on 21st January 2002 when the matter was moved before a learned Single Judge, in view of the submission of the petitioner that the order passed against him was an exparte order, the court passed an interim order after hearing the A.G.P. directing a status quo with respect to petitioner's employment nor any criminal action be taken against him until further orders. A notice before admission was directed to be issued for final disposal at the admission stage itself.

4. Thereafter the matter has appeared before this Bench and Mr.Hegde has appeared for respondents Nos.3 and 4 who was not heard before the learned Single Judge on 21st January 2002. As stated above, he has pointed out that before passing of that order, the petitioner was already terminated from service with effect from 7th January 2002.

5. Mr.Mendadkar, learned counsel for the

petitioner, submitted that even from the affidavit which is filed by the officer of the Caste Scrutiny Committee, it is clear that service had not been effected on the petitioner and yet the Committee proceeded with the matter before it arrived at its conclusion. He submitted that obviously this order is an exparte order and therefore it ought to be interfered with. Mr.Sonawane, learned A.G.P. for the respondents, submitted that if the court directs, the Committee will go into the question of the validity of the caste certificate on its merits.

6. In view of what is narrated above, in our view, the petitioner deserves an appropriate hearing before the Scrutiny Committee where he should get a full opportunity to lead evidence in its entirely. We, therefore, set aside the order passed by the Scrutiny Committee mainly on the ground that it was an exparte order. The matter will stand revived on the file of the Committee where the petitioner will appear on 4th October 2004 and will present all his material in support. The Committee will decide his caste claim within 4 months thereafter.

7. Mr.Mendadkar submits that since the petitioner has lost his job in the meanwhile, he should get his

employment in the event the Committee decides in his favour. As far as that part is concerned, it would not be proper for us to make any observation at this stage. It would be open for him to make a representation to the State Transport Corporation, if he so desires, and the State Transport Corporation will take its own decision on the representation to be made by the petitioner.

8. In view of the fact that the petitioner was also protected from a criminal action under the interim order, we add that in the event the order of the Committee is adverse to the petitioner, it will not be implemented leading to any criminal action for a period of 4 weeks after the order is served on the petitioner.

9. Petition stands allowed to this limited extent.

(H.L. GOKHALE, J.)

(SMT. NISHITA MHATRE J.)